

**PROPOSITION 42
CITY AID PROGRAM FUNDING AGREEMENT**

This CITY AID PROGRAM FUNDING AGREEMENT, Agreement No. D09-009 ("Agreement") is made and entered into this day of _____, 2009, by and between County of Orange, California, a political subdivision of the State of California ("County"), and City of Costa Mesa, a municipal corporation in the State of California ("City"). The County and City shall sometimes be referred to separately as a "Party" and collectively as the "Parties."

RECITALS

A. WHEREAS, Orange County cities have streets in need of routine roadway maintenance, minor roadway widening (non-capacity enhancing) and storm damage improvements, but have limited funds to address these needs.

B. WHEREAS, pursuant to Streets and Highways Code Section 1686, the California State Legislature has determined that the improvement and maintenance of all city streets is of general county interest. County believes that it is of general interest to the county and all the cities within the county to extend financial aid to the cities for the general improvement and maintenance of city streets in that the improvement of transportation congestion is of benefit to all Orange County residents.

C. WHEREAS, County desires to assist Orange County cities with the improvement and maintenance of city streets, and to help improve regional transportation needs within the county. County receives Proposition 42 ("Prop. 42") allocations from the State's Transportation Investment Fund ("TIF") for the purposes of street and highway maintenance, rehabilitation, reconstruction and storm damage repair.

D. WHEREAS, With authorization from the State, County has established its Prop. 42 City Aid Program ("CAP"). County will allocate a portion of County's Prop. 42 funds to participating cities for the purposes of routine roadway maintenance, minor roadway widening (non-capacity enhancing) and storm damage improvements within the cities ("CAP Funds"). City's expenditure of CAP Funds is to be in accordance with California Constitution Article XIX B Section 1 and Revenue and Taxation Code Section 7104, and all other applicable State rules, regulations and guidelines ("Prop. 42 Requirements").

E. WHEREAS, City owns and operates streets in need of routine roadway maintenance, minor roadway widening (non capacity enhancing) and storm damage improvements, and acknowledges that it has limited funds by which to address these needs. Therefore, City is in support of receiving CAP Funds.

NOW, THEREFORE, in consideration of the foregoing recitals of fact, the mutual covenants and conditions contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. City Request for CAP Funds

Prior to disbursement of CAP Funds, City shall provide County with a request for CAP Funds listing the proposed project(s), delineating all costs for project design, construction, and construction management that comply with Prop. 42 Requirements, and referencing Agreement by number. City shall also provide documentation, such as a city council minute order, indicating award of the project(s), the contractor to which the project(s) was awarded, and the amount of award, which award must be greater than the amount of the request (collectively, "CAP Funds Request").

2. Procedures for the Disbursement of CAP Funds

2.1 After County reviews and confirms eligibility of City's CAP Funds Request, County will disburse CAP Funds to City in accordance with this Section 2 in an amount not to exceed \$265,964.00.

2.2 County will disburse CAP Funds to City in the order it receives eligible CAP Funds Requests from all participating cities, i.e., on a "first come, first served" basis. County will disburse CAP Funds to City upon County's receipt of its fiscal year 09/10 Prop. 42 allocations from the State. CAP Funds will not be disbursed to City until such time that adequate Prop. 42 funds are made available to County to pay all participating cities which have previously submitted eligible CAP Funds Requests.

2.3 CAP Funds shall be allocated proportionally based on the percentage of City's population compared to the total population of all participating cities as of the latest estimates published by the Demographic Research Unit of the California Department of Finance.

2.4 County's disbursement of CAP Funds is subject to the State's allocation of Prop. 42 funds to County including, but not limited to, allocation delays by the State or changes to Prop. 42 Requirements.

3. City Obligations

3.1 In order to receive CAP Funds, City shall maintain its existing Maintenance of Effort ("MOE") of local funds for street and highway, maintenance, rehabilitation, reconstruction, and storm damage repair. City must annually expend from its general fund for street, road, and highway purposes an amount not less than the annual average of its expenditures from its general fund during the 1996-97, 1997-98, and 1998-99 fiscal years, as reported to the State Controller pursuant to Streets and Highways Code Section 2151.

3.2 City must expend its CAP Funds between July 1, 2009 and June 30, 2011. Any CAP Funds not expended by June 30, 2011 ("Deadline") shall promptly be returned to County, but in no event shall City return CAP Funds later than August 31, 2011.

3.3 If City determines at any time that City cannot expend its CAP Funds by the Deadline, City shall immediately notify County in writing of this determination. City shall then

return its remaining CAP Funds within thirty (30) days of said notification. Should City's CAP Funds be returned to County prior to Deadline, County will attempt to reallocate the funds to other County projects. However, if County is unable to do so, the funds will be returned to the State.

3.4 Upon the expenditure of all CAP Funds, City shall promptly submit, but no later than August 31, 2011, an expenditure certification to County, listing the project(s) for which CAP Funds were used and certifying that all expenditures of CAP Funds comply with Prop. 42 Requirements.

3.5 Upon request by County, City shall provide County, within thirty (30) days of the request, all documentation and other information relating to City's expenditure of CAP Funds.

3.6 In the event of an audit by the State, City shall provide State and/or County all documentation requested by the State within the timeframe required by the State. City shall work cooperatively with County during the course of the audit. City shall attend all audits and audit proceedings, as needed. If the State finds that any City expenditure of CAP Funds is ineligible or does not comply with Prop. 42 Requirements, the amount of the ineligible expenditure shall be immediately reimbursed to County, which will be returned to the State.

4. Miscellaneous Provisions

4.1 Availability of Funds County's obligation is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating County to expend or as involving County in any contract or other obligation for future payment of money in excess of appropriations authorized by law. If County's total Prop. 42 allocation from the State falls 10 percent or more below the anticipated eighteen million, three hundred thousand dollars (\$18,300,000) yearly allocation, County will adjust the seven million dollar (\$7,000,000) total CAP allocation by the same percentage. City's allocation of CAP Funds will likewise be adjusted. There will be no adjustment if County's total Prop. 42 allocation from the State exceeds County's anticipated allocation amount.

4.2 Indemnification & Hold Harmless City shall indemnify, defend with counsel approved in writing, save and hold County and each of its elected officials, officers, directors, agents and employees harmless from any and all claims, injuries, liabilities, actions, damages, losses or expenses, including attorney's fees and costs, of every type and description to which they may be subjected arising out of any act or omission of, its employees, representatives, agents and independent contractors in connection with the implementation of the actions described in this agreement. Should a City expenditure of CAP Funds be determined to be ineligible by the State, City is further liable for any interest payments, fines, or other forfeitures that may be assessed by the State.

Notwithstanding Sections 3.2 and 3.3, City shall return CAP Funds to County within thirty (30) days should 1) the State or County deem any City expenditure of CAP Funds to be ineligible; or 2) the City Aid Program be found to be incompatible with State requirements.

4.3 Assignment This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. No assignment of City's interest in this Agreement shall be made without the written consent of County. Furthermore, City agrees that CAP Funds shall not be expended on, given to, shared with, or otherwise provided to any other city, local agency or other entity that is not contemplated under this Agreement.

4.4 Entirety & Amendments This Agreement contains the entire agreement between the Parties with respect to the matters provided for herein. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

4.5 Severability If any part of this Agreement is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

4.6 Calendar Days Any reference to the word "day" or "days" herein means calendar day or calendar days respectively, unless otherwise expressly provided.

4.7 Notices Notices or other communications which may be required or provided under the terms of this Agreement shall be given as follows:

City: Director of Public Works/City Engineer
Public Works Department
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Phone 714-754-5343
Facsimile 714-754-4942

and

County: Director/Chief Engineer, OC Engineering
OC Public Works
County of Orange
PO Box 4048
Santa Ana, CA 92702-4048
Phone 714-667-3213
Facsimile 714-834-2496

All notices shall be in writing and deemed effective when delivered in person or deposited in the United States mail, first class, postage prepaid and addressed as above. Notwithstanding the above, the Parties may also provide notices by facsimile transmittal, and any such notice so given shall be deemed to have been given upon receipt during normal business hours or, in the event of receipt after business, on the following business day. Any notices, correspondence,

reports and/or statements authorized or required by this Agreement, addressed in any other fashion shall be deemed not given.

4.8 Termination County may terminate this Agreement for any reason provided that City has not awarded any project on which its CAP allocation will be expended. After City has awarded a project on which its CAP allocation will be expended, County may terminate this Agreement if City is in breach of this Agreement. Any such termination shall be accomplished by delivery to City a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which CAP funding is terminated, and the date upon which the termination is effective.

4.9 Breach The failure of City to comply with any of the terms and conditions of this Agreement shall be a material breach of this Agreement. A breach of this Agreement by City may be grounds to not include City in future allocations of City Aid Program, as determined by County.

4.10 Waiver of Jury Trial Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Agreement and/or any other claim of injury or damage.

4.11 Attorney's Fees In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, the Parties shall bear their own attorney's fees, costs and expenses.

4.12 Governing Law & Venue This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

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IN WITNESS WHEREOF, City has caused this Agreement to be executed by its Mayor and attested by its Clerk, and County has caused this Agreement to be executed by the Chairman of the Board of Supervisors and attested by its Clerk on the dates written opposite their signatures, all thereunto duly authorized by the City Council and the Board of Supervisors, respectively.

City of Anaheim,
a municipal corporation

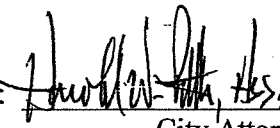
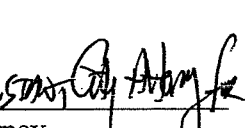
Date: _____

By: _____
Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

By:  
City Attorney

County of Orange,
a political subdivision of the State of
California

Date: _____

By: _____
Chairman, Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

APPROVED AS TO FORM:
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: _____
Darlene J. Bloom
Clerk of the Board of Supervisors of
Orange County, California

By: _____
Deputy



Proposition 42 City Aid Program
Project List

Agreement No.: (D09-)

Date: 3-30-2009

To: County of Orange

Fiscal Year: FY09/10

City Contact Person Fariba Fazeli, Project Manager Phone: (714) 754-5378

Existing Pavement Condition Index (PCI)** Average PCI is 70 CAP Allocation Amount* ()

Item	Project	Project Limits	Project Description (Pavement Maintenance and/or Storm Damage Repair)	Estimated Cost	Estimated Award Date
1	Tustin Avenue	15 th Street to 17 th Street	Removal and reconstruction of pavement, damaged curb & gutter, sidewalk and driveways, including construction of access ramps per the Americans with Disabilities Act (ADA) standards.	\$1,100,000	September 2009
2	Orange Avenue	Del Mar Ave. to Mesa Dr	See Project 1	\$500,000	September 2009
3	Vanguard Way	Newport Blvd. to Fair Dr	See Project 1	\$1,000,000	November 2009
4	Mendoza Drive	Lorenzo Dr. to Mission Dr.	See Project 1	\$1,000,000	November 2009
5					
6					
Total Cost:				\$3,600,000	

* City Aid allocation for FY09/10 must be fully expended by 6/30/11.

** Evaluation of Pavement Condition Index (PCI) should be consistent with OCTA's final report on "Countywide Assessment of Existing and Future Pavement Needs," dated March 2006.